

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§ 1056. Disclaimer of unregistrable matter**(a) Compulsory and voluntary disclaimers**

The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) Prejudice of rights

No disclaimer, including those made under subsection (e) of section 1057 of this title, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

(July 5, 1946, ch. 540, title I, § 6, 60 Stat. 429; Pub. L. 87-772, § 3, Oct. 9, 1962, 76 Stat. 769; Pub. L. 100-667, title I, § 108, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-113 substituted “Director” for “Commissioner”.

1988—Subsec. (b). Pub. L. 100-667 substituted “subsection (e)” for “paragraph (d)”.

1962—Pub. L. 87-772, among other changes, provided that an applicant may voluntarily disclaim a component of a mark sought to be registered.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

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TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1057. Certificates of registration**(a) Issuance and form**

Certificates of registration of marks registered upon the principal register shall be is-

sued in the name of the United States of America, under the seal of the United States Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon, and a record thereof shall be kept in the United States Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the United States Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

(b) Certificate as prima facie evidence

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.

(c) Application to register mark considered constructive use

Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

(1) has used the mark;

(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or

(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 1126(d) of this title to register the mark which is pending or has resulted in registration of the mark.

(d) Issuance to assignee

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the United States Patent and Trademark Office. In case of change of ownership the Director shall, at the request of the owner and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

(e) Surrender, cancellation, or amendment by owner

Upon application of the owner the Director may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the United States Patent and Trademark Office.